

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

DAVID R. & LINDA P. LEE,)	
)	DOCKET NO.: PT-1997-118
Appellants,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on August 5, 1999, in the City of Polson, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayer, David R. Lee (Lee), presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraisers Jackie Ladner (Ladner), Kim Young (Young) and Regional Manager Scott Williams (Williams), presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and a schedule for post-hearing submissions was established. The Board then took the appeal under advisement; and the Board, having fully considered the testimony, exhibits and all things and

matters presented to it by all parties, finds and concludes as follows:

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Lot 9, Bielenberg Landing Subdivision, Swan Lake, Lake County, State of Montana, and the improvements located thereon. (assessor code - 16043).

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$159,512 for the land and \$97,088 for the improvements.

4. The taxpayer appealed to the Lake County Tax Appeal Board on December 30, 1997 requesting a reduction in value to \$111,600 for the land and \$90,603 for the improvements, stating:

LAND VALUE (1) Recent sales do not support 254% increase in appraised value from 1992 to 1996. My .23 acre was appraised at over \$1715 per lake foot--similar larger parcels selling for \$1100 per foot. (2) Swan Lake land value regression analysis flawed. Several data points in analysis skew land values unacceptably high. I have requested formula used but have not received data requested. (3) Bielenberg Landing Lot 8 (most comparable sales available) sold in 1994

for \$125,000 ("high water mark" for such property). BUILDING VALUE: 9/1/97 assessment raised 1996 value 12.7% over '92 value. 12/24/97 assessment arbitrarily raised '96 value 20.8% over adjusted '92 value. Building values were raised by Lake County Assessor's office following site visit in Dec. 97--site visit prompted by my appeal of LAND value set by Assessor's office dated 9/1/97. This is my first opportunity to appeal building appraisal. Request hearing to present detailed support for my appeal.

5. In its March 16, 1998 decision, the county board upheld the DOR's value, stating:

Sales in this area when appreciated to 1/1/96, support the appraised value as set by D.O.R.

6. The taxpayer appealed that decision to this Board on March 20, 1998, stating:

(1) Lake County Assessor has built in automatic appreciation factor that drives land values up artificially--this inflationary factor defies what has occurred in the market and what is happening in the marketplace today. (2) market value of buildings (as of 1992) was raised by an arbitrary amount (20.8%). Lake Co. Assessor cannot explain how or why her 1996 market value was determined.

TAXPAYER'S CONTENTIONS

Lee testified that he had purchased the subject property in 1988 for use as a summer home and a future retirement home. Taxpayer's Exhibit 1 outlines the increase in the value of the land and improvements since 1988. Lee began his explanation of this exhibit by presenting the land data. The sale price of the land in August 1988 was \$52,500. In 1992 it was appraised with a market value of \$62,775. In 1996 Lee was "shocked" when he received the letter saying

the market value was now \$159,512. In attempting to determine how this value was derived, he contacted the Lake County Assessor, who sent him Taxpayer's Exhibit 2, the computer assisted land pricing (CALP) model for neighborhood 301-3LF, Swan Lake. This exhibit is a compilation of nineteen vacant land sales used to establish land values for properties in neighborhood 301-3LF. In summary, this exhibit illustrates the following:

<u>CALP MODEL</u>		
Base	100	1
Base	\$1,400	\$29,000
Adj. R	\$960	\$3,600
MONTHLY RATE		1.0241%

Lee testified that, at his first hearing before the Lake County Tax Appeal Board in 1998, the DOR presented a new CALP model using different data points, but he ignored that and used the information they had initially given to him.

Because Lee's primary residence is in Billings, he took the CALP model to the Yellowstone County Assessor, Tom Bick (Bick), and asked for Bick's assistance in his attempt to understand the valuation of his land. Lee testified that after Bick studied the CALP model, he indicated that he could not understand how the land was valued either, because

numbers were missing from the equation that were necessary to find out how the results were obtained, data points were included that could skew the results, and the CALP table included some assessed values that were really low and some sale prices that were really high.

Lee explained that he continued to study the CALP model and finally concluded that "it is not really easy to understand, and as a taxpayer, I think it's something that we should be able to understand. It's a mathematical analysis...and somewhere in that model there's an exponential number that's automatically increasing the value of the property over time...it doesn't really look at what's happening in the market right now, and it's supposed to, so I really don't trust it...I don't think it's a fair analysis of the land values." Lee testified that he then decided he would do his own analysis of land values by extracting data points in the CALP model and looking at what he considered to be comparable sales. The following chart (Taxpayer's Exhibit 3) summarizes Lee's analysis. He pointed out the asterisk next to entry #4 and explained that the lot described in that entry was the lot adjacent to his property. It had been sold in 1994 but was not included in the data in the CALP model he had been given by the Lake

County Assessor's office.

COMPARABLE SALES OF SWAN LAKE PROPERTY 1992-1995

Sale Date	Lot Size	Lake Frontage	Sales Price	Cost Per Foot
10/93	1.15 acre	83'	\$ 85,000	\$1024
6/93	.45 acre	90'	\$ 112,000	\$1244
7/94	1.28 acre	90'	\$ 85,000	\$ 944
3/94	.23 acre	93'	\$ 125,000	\$1344*
9/94	.88 acre	96'	\$ 102,000	\$1062
10/95	.59 acre	100'	\$ 165,000	\$1650
8/93	.60 acre	101'	\$ 115,000	\$1138
9/93	.71 acre	101'	\$ 135,000	\$1336
1/94	.50 acre	102'	\$ 130,000	\$1274
7/92	.93 acre	107'	\$ 83,000	\$ 775
AVERAGE	.73 acre	96'	\$ 113,700	\$1184

Data Points supplied by Lake County Assessor's Office (See '96 Land Value Regression CALP Model--Swan Lake Frontage Neighborhood 301-3LF; Taxpayer's Exhibit 2)

**This data point was not included in the above-mentioned Swan Lake '96 Land Value Regression Model. It has been included here since it is located adjacent (Bielenberg Landing lot 8) to my property and is most like my lot.*

Lee discussed the information contained in Taxpayer's Exhibit 3, stating that, with the exception of the fourth lot listed, all of the lots were larger in size than his .23 acre lot. The average of the listed lots was .73 acre. His lot has 93 feet of lake frontage, and the average lake frontage of the listed lots is 96 feet. The average sale price is \$113,700, with an average cost per foot of \$1184. Lee stated, "That's what those properties sold for in that time frame in which this analysis was done. I'm not looking at any inflationary factors thrown in there to automatically jack up the price over time. I'm just looking at what they sold for."

Taxpayer's Exhibit 4 describes sales of Swan Lake property in 1996-1997. The information had been compiled for his county tax board appeal from data obtained from Dean & Leininger Realtors in Bigfork, Montana. Following is a summary of the sales information presented in this exhibit.

RECENT SALES OF SWAN LAKE PROPERTY 1996-1997

<i>Sale Date</i>	<i>Lot Size</i>	<i>Lake Frontage</i>	<i>Sales Price</i>	<i>Cost Per Foot</i>
8/96	4.27 acre	148'	\$175,000	\$1182
8/96	12.47 acre	148'	\$200,000	\$1351
9/96	.84 acre	135'	\$172,000	\$1274
10/96	.64 acre	97'	\$136,000	\$1402
3/97	1.70 acre	271'	\$298,000	\$1099
11/97	.68 acre	165'	\$197,500	\$1196
AVERAGE	3.40 acre	161'	\$196,417	\$1220

Lee pointed out that the lot sizes shown in Taxpayer's Exhibit 4 were significantly larger than the size of his lot. The sales prices were quite high, but the cost per foot was "remarkably low" at an average of \$1220, as compared to the average of \$1184 for 1992-1995 sales shown on Taxpayer's Exhibit 3.

Taxpayer's Exhibit 5 is an undated real estate flyer from Ted Dykstra & Associates describing Lee's neighbor's lot that is for sale at an asking price of \$124,900. The lot is similar in size to the subject property. Lee stated, "He may not get \$124,900. In fact, that's been for sale for the last couple of years and it hasn't sold, so he keeps lowering his price in hopes of selling it. When it does

sell, I am fairly sure that it's going to sell for somewhat less than that. Therefore, I don't believe that the market value has risen significantly, which, therefore, points back to this CALP model and says that is a flawed equation. There is something wrong with the inflationary factor that is built in there. It's wrong. They've got the market figured out incorrectly. And what's happening over time is that the market has basically leveled off and is now in a downturn somewhat in the area...what's happened over time is not validated by what's occurring in the present market."

Lee concluded his testimony on the value of his land by stating, "...the current market analysis supports...a \$1200 a foot value, not the \$1710 a foot value that the \$159,512 assessment reflects, but something more with what's happening in the current market. Therefore, I just multiplied my 93-foot lot times \$1200 and came up with \$111,600. Simple, fair, understandable."

As a preface to his presentation on the value of the subject improvements, Lee testified that when he had initially appealed the value of his lot after receiving his 1992 assessment, he had lost his appeal. When he appealed his 1996 assessment, he was warned by neighbors that since he had appealed, the DOR would look at his building and

would increase the assessment on that also. He did not believe this would happen, but after he appealed in October 1997, the appraiser visited his property in December 1997 and reassessed the building. Taxpayer's Exhibit 1 summarizes the points of his appeal on the subject improvements.

The DOR's 1992 market value of the improvements was \$68,825. In 1996 the value had increased 12.7%, to \$77,588. Following the appraiser's visit to the property in December 1997, Lee received a reassessment notice showing the revised January 1992 market value as \$80,370 and the revised January 1996 market value as \$97,088, an increase of 20.8% from 1992 to 1996. Lee said he had not been given an explanation of how these values had been determined. He thought that the Department of Revenue had determined the value of the improvements he had made to his building to be approximately \$12,000, which they had added to the original 1992 market value to obtain the revised 1992 value. He did not know how they determined the 20.8% increase. He believed that a 12.7% increase, resulting in a revised 1996 value of \$90,577, would be more fair than the 20.8% increase he had received. He explained that his use of rounding had resulted in the requested value of \$90,603, rather than \$90,577, the requested value on his appeal form.

DOR'S CONTENTIONS

DOR's Exhibit A is a two-page exhibit. Page 1 is a map showing the location of the subject property and page 2 is a detailed map of the subject property and the neighboring lots in Bielenberg Landing.

Exhibit B is the property record card for the subject property. The "land data & computations" section in summary illustrates the following:

Front foot (4):	Width - 93 feet;	Depth - 1 foot
Unit Price -	\$ 1,433.12	
Land Value -	\$133,280	
Acreage (1):	.231 acres	
Land value -	\$ 26,232	
TOTAL LAND VALUE		\$159,512

Exhibit C is the CALP model for neighborhood 301-3LF. This exhibit is a compilation of twenty vacant land sales, eighteen of which were used to establish land values for properties in neighborhood 301-3LF (two properties, consisting of 4.9 acres and 19 acres, were excluded because of their size). In summary, this exhibit illustrates the following:

<u>CALP MODEL</u>		
Base	100	1
Base	\$1,400	\$29,000
Adj. R	\$960	\$3,600
MONTHLY RATE		1.0241%

Lee noted that this regression model contained different data than the model he had originally been sent. The fourth sale listed on this model is the Bielenberg Landing sale, which was not included in the model Lee had received. Ladner stated that despite this sale not being included, the CALP results are the same on Taxpayer's Exhibit 2 as they are on DOR's Exhibit C.

DOR's Exhibit D is a paired sales analysis of properties in the Swan Lake neighborhood 301-3. This exhibit is summarized as follows:

<i>SALE DATE</i>	<i>SALE PRICE</i>	<i>DIFFERENCE</i>	<i>MONTHS</i>	<i>%/MONTH</i>
1/92	\$ 87,000			
1/93	\$129,000	148.3%	12	4.02%
11/92	\$ 85,000			
3/94	\$125,000	147.1%	16	2.90%
11/89	\$ 28,000			
5/94	\$ 88,000	314.29%	54	3.96%
9/90	\$ 83,000			
10/94	\$210,000	253.01%	49	3.12%

Ladner asserted that the paired sales analysis "shows a considerably higher rate of appreciation for lots in this area" than is indicated by the CALP model's monthly rate of appreciation of 1.0241%. DOR's Exhibit E lists sales of lots in Bielenberg Landing between 1988 and 1994, again demonstrating that "there's been a significant increase in the value of lots in this area."

BIELENBERG LANDING SALES

LOT #	SALE	YEAR	FRONT FEET	\$/FF
9	\$ 52,800	1988	93	\$ 568
3	\$ 58,500	1990	91	\$ 643
4	\$ 60,000	1990	91	\$ 659
5	\$ 65,000	1990	91	\$ 714
6	\$ 85,000	1992	91	\$ 934
8	\$ 85,000	1992	91	\$ 934
8	\$125,000	1994	91	\$1,374
A	\$ 80,000	1993	100	\$ 800
B	\$195,000	1993	310	\$ 629

DOR's Exhibit F was prepared by Ladner to demonstrate "how well they are doing in their mass appraisals. I took Swan Lake sales...some are improved, some are unimproved; I didn't time trend. Our values versus the actual sale values on these properties are around 98%. If I take out the high ones where we're way high and the ones where we're way low, we're still coming in at 99%." Exhibit F is summarized as follows:

SWAN LAKE SALES

LF	ACRE	MO	YEAR	SALE \$	APPR \$	STATUS	%
84	0.250	8	97	\$ 275,000	\$ 191,400	IMP	70%
104	0.520	12	96	\$ 277,500	\$ 204,100	IMP	74%
70	0.330	5	97	\$ 238,000	\$ 181,900	IMP	76%
90	0.220	7	97	\$ 255,000	\$ 195,700	IMP	77%
110	0.590	7	96	\$ 453,000	\$ 373,794	IMP	83%
30	0.830	9	95	\$ 150,000	\$ 126,951	IMP	85%
134	0.590	7	96	\$ 455,000	\$ 451,800	IMP	99%
83	1.150	6	96	\$ 108,000	\$ 107,456	VAC	99%
90	0.240	10	95	\$ 195,000	\$ 194,200	IMP	100%
160	0.450	7	97	\$ 347,000	\$ 347,200	IMP	100%
153	0.670	7	97	\$ 725,000	\$ 741,902	IMP	102%
181	1.000	10	94	\$ 287,000	\$ 295,600	IMP	103%
200	1.078	8	95	\$ 250,000	\$ 265,281	VAC	106%

<i>LF</i>	<i>ACRE</i>	<i>MO</i>	<i>YEAR</i>	<i>SALE \$</i>	<i>APPR \$</i>	<i>STATUS</i>	<i>%</i>
128	0.980	8	96	\$ 277,000	\$ 301,500	IMP	109%
110	0.580	12	95	\$ 320,000	\$ 350,398	IMP	109%
95	1.030	5	96	\$ 100,000	\$ 110,228	VAC	110%
107	1.290	12	95	\$ 120,000	\$ 132,573	VAC	110%
153	1.010	1	96	\$ 465,000	\$ 519,206	IMP	112%
135	0.840	9	96	\$ 172,000	\$ 202,024	VAC	117%
97	0.640	10	96	\$ 136,000	\$ 164,824	VAC	121%
						AVERAGE	98%
					AV. LESS	HI/LOW	99%

BOARD'S DISCUSSION

Lee had expressed his concern that the DOR had revalued his improvements as a "punitive response" after he had appealed his land value. Ladner explained that when AB-26's (property review forms) are filed, the DOR assessor visits and reviews the property, noting changes that have been made since the previous visit. The goal of the DOR is "to have accuracy on the records." Lee agreed, in response to questions by Ladner and by the Board, that the data on his property record card was accurate as far as he could tell.

Lee stated that he had had a fee appraisal done on his property when he applied for an equity loan in 1997. He did not enter this appraisal as evidence, nor did he have it with him at the hearing. However, he testified that the total was "approximately \$250,000" and "\$125,000 was what he wrote on there" for the land value, leaving approximately \$125,000 for the value of the improvements. It is the

opinion of the Board that insufficient evidence was presented by the taxpayer to support his requested value of \$90,603 for the improvements. If the fee appraisal for the improvements indicating a market value of approximately \$125,000 is accurate, then the DOR's appraised value of \$97,088 is too low. However, this Board will not penalize the taxpayer for bringing an appeal to this Board based on Department of Revenue v. Barron, 245 Mont. 100, 799, P.2d 533,(1990), in which the Montana Supreme Court held:

...Because Patricia C. Barron undertook to appeal the application of the 30% adjustment to her residential property, and bore the burden of litigation to bring to the DOR and this Court the problems arising out of the ratio studies, she is entitled to the beneficial fruits of her litigation.

Lee contends that land values in the Bielenberg Landing should reflect \$1,200 a foot rather than the \$1,715 a foot reflected in his assessment. Taxpayer's Exhibit 5 is a flyer from Ted Dykstra & Associates (realtors), advertising Lee's neighbor's lot at a sale price of \$124,900. This lot is located due west and immediately adjacent to the subject property, and is designated as either Lot X15 or Lot A on the site maps. Lee's post-hearing submission indicated that this lot, which is listed for sale at \$124,900 by both Ted Dykstra & Associates and ReMax, is .375 acre with approximately 100 feet of lake frontage and no restrictions

to lake access. Lee stated that the lot size and the limited access indicated on the flyer (Taxpayer's Exhibit 5) were incorrect. Lee had testified that this property has been for sale for "the last couple of years and it hasn't sold, so he keeps lowering his price in hopes of selling it."

Reconstructing the DOR's land valuation of \$159,512 for the subject property is accomplished as follows:

93.00 front feet	
x \$1,433.12 base rate per front foot*	
\$133,280.00	Total value based on front footage
	<i>*DOR did not explain why \$1433.12 was used rather than the \$1400 base rate per foot for the first 100' as shown on the CALP model.</i>
1.0 acre - base size	
- <u>.231</u> acres - subject lot size	
.761 acres	
x \$3,600 acre adjustment rate	
\$2,768	amount of adjustment for size difference
\$29,000 base rate per acre	
- <u>\$2,768</u> amount of adjustment for size difference	
\$26,232	additional land value
<u>+133,280</u>	
\$159,512	total land value

The front foot valuation method the DOR in Lake County has determined to adopt is far different than what the Board has been presented as land valuation methods in other counties. In *PT-1997-26, Glen A. Wohl v. DOR*, a Missoula County property located on Seeley Lake, the DOR established a base size of 100 front feet, a standard depth of 200 feet,

a base rate of \$1,050, and an adjustment rate of \$300.

The "*Montana Appraisal Manual*", page A32-9, Lot Depth Valuation Factors, in summary states:

These tables are to be used as guides for calculating values for lots that are either shorter or longer than the standard lot depth in the area...

...Select the actual depth of the lot and follow across to the proper standard lot depth for the area being appraised. The figure encountered is the percentage factor to be applied to the front foot value of the lot. The modified front foot value is then multiplied by the width of the lot. (emphasis added)

...The front foot depth factor is equal to the square root of the ratio of the actual depth to the standard depth. (emphasis added)

$\sqrt{\text{actual depth/standard depth}}$

For example: a 90 foot deep lot where the standard depth is 100 feet gives a depth factor:

$$\sqrt{90/100} = \sqrt{0.90} = 95\%$$

Based on Lake County's method of using one foot as the standard depth, the depth factor calculation for the subject property (which is 108 feet in depth) renders the following depth factor adjustment, assuming a rectangular lot:

$$\sqrt{108/1} = \sqrt{108} = 10.4\%$$

Assuming the standard depth for the model was **200** feet,

1 $\sqrt{}$ = square root

the calculation would render the following:

$$\sqrt{108/200} = \sqrt{.54} = 73\%$$

Assuming the standard depth for the model was **100** feet, the calculation would render the following:

$$\sqrt{108/100} = \sqrt{1.08} = 1.04\%$$

The front foot land valuation method recognizing the Montana Appraisal Manual renders the following:

	<u>DOR - Lake County</u>	<u>Board's Calculation</u>
Front Foot Value	\$1,433 FF	\$1,433 FF
Depth factor	x 10.4%	x 73%*
Adjusted FF Indication	\$ 149 FF	\$1,046 FF
Lot Front Feet	x 93 FF	x 93 FF
Lot Value	\$ 13,857	\$ 97,278
		<i>*using 200' st. depth</i>

	<u>Board's Calculation</u>
Front Foot Value	\$1,433 FF
Depth factor	x 1.04%*
Adjusted FF Indication	\$1,490 FF
Lot Front Feet	x 93 FF
Lot Value	\$ 138,570
	<i>*using 100' standard depth</i>

The DOR's land value for the subject property is \$133,280 for the first one foot of the 93 front feet. The additional land area contributes an additional \$26,232 in value, for a total land value of \$159,512.

In an attempt to determine the appropriate standard depth for the lots in Bielenberg Landing, the Board utilized the site map of these lots (Taxpayer's Exhibit 3) from *PT 1997-20, Donald D. Bielenberg vs. DOR*. A summary of this

information follows.

Lot	Size	Front Feet	Total SF	Depth
9	.231 acre	93	10,062	108
8	.233 acre	91	10,149	112
7	.238 acre	91	10,367	114
6	.244 acre	91	10,629	117
5	.232 acre	91	10,106	111
4	.250 acre	91	10,890	120
3	.269 acre	92	11,718	127
2	.313 acre	92	13,635	148
1	.490 acre	86	21,344	248

In calculating a standard depth for the Bielenberg landing lots, the Board eliminated lot #1 because of its disproportionate size. The average depth of the remaining eight lots is 120 feet. Using this number to calculate a depth factor adjustment for the subject lot results in the following:

$$\sqrt{108/120} = \sqrt{.90} = 95\%$$

Using this depth factor adjustment in the front foot land valuation method from the Montana Appraisal Manual results in the following:

Board's Calculation

Front Foot Value	\$1,433 FF
Depth factor	x 95%
Adjusted FF Indication	\$1,361 FF
Lot Front Feet	x 93 FF
Lot Value	\$ 126,573

It is the Board's opinion that the DOR's method used to establish the market value for the subject property is not

supported by land value methodology as defined in the Montana Appraisal Manual. The Board made the assumption of either a 200-foot or a 100-foot standard depth factor in its analysis to illustrate a depth factor adjustment. The Board further determined that a more accurate standard depth for lots in the Bielenberg Landing is 120 feet and used this 120-foot standard depth to illustrate a more appropriate depth factor adjustment for the subject lot. The effort was made by the Board because the depth factor adjustment of a 1-foot standard depth resulted in an unrealistic indication.

It is the Board's opinion that the DOR's additional \$26,232 in market value for the land is not substantiated.

A post-hearing submission by the DOR expanded upon Taxpayer's Exhibit 4, *Recent Sales of Swan Lake Property, 1996-1997*, by adding the appraised values of the sold properties. The Board determined the front foot actual sales price compared to the front foot appraised value. The information is provided in the following table. Comments by the DOR are included.

<i>Sale Date</i>	<i>Lake Front</i>	<i>Sales Price</i>	<i>Sales per FF</i>	<i>Appr. Price</i>	<i>Appr. per FF</i>	<i>% Diff. per FF</i>
08/96	148'	\$175,000	\$1182	\$226,852	\$1533	+30%
08/96	148'	\$200,000	\$1351	\$221,812	\$1499	+11%
09/96	135'	\$172,000	\$1274	\$202,024	\$1496	+17%
10/96	97'	\$136,000	\$1402	\$164,824	\$1699	+21%
03/97	271'	\$298,000	\$1100	\$306,222	\$1130	+03%
11/97	165'	\$197,500	\$1197	\$199,888	\$1211	+01%

"The DOR values on the 1996 sales appear to be somewhat high. However, it should be noted that the first two sales

actually sold as one sale for \$375,000 and the DOR has them valued as two separate parcels which renders a higher total value. 1997 sale values compared to DOR values are very close.

Additional sales seem to suggest that the market slowed 1996 to rebound in 1997 and 1998."

Sale Date	Lake Front	Sales Price	Sales per FF	Appr. Price	Appr. per FF	% Diff. per FF
05/95	175'	\$185,000	\$1057	\$117,850	\$673	-36%
12/95	107'	\$120,000	\$1122	\$132,573	\$1239	+10%
03/98	270'	\$305,000	\$1130	\$303,349	\$1130	-.5%

It is Lee's contention that sales prices of Swan Lake properties reached a peak in 1994, began dropping in 1995, and were flat in 1996. The paired sales analysis (DOR Exhibit D) contains no 1995 or 1996 sales to either support or dispute this contention. In the DOR's post-hearing submission, Ladner stated that "additional sales seem to suggest that the market slowed (in) 1996." The list of Bielenberg Landing sales (DOR Exhibit E) contains no 1995 or 1996 sales, and it includes only one 1994 sale. The 18 sales used in the CALP table (DOR Exhibit C) do not include any 1996 sales and only three 1995 sales. The only Bielenberg Landing lot included in the CALP model is Lot 8, located adjacent to the subject property. This lot, which had sold for \$125,000 in 1994, has .233 acres and 91 feet of lake front, making it the most comparable to the subject property of any comparables presented by the DOR. Yet Lot 8 had not been included in the original CALP model (Taxpayer's Exhibit 2) that had been given to Lee.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

4. **ARM 42.18.122 Revaluation Manuals** (2) For the reappraisal cycle ending December 31, 2009, the 2009 Montana Appraisal Manual will be used for valuing residential and agricultural/forest land real property.

5. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

6. The appeal of the taxpayer is hereby granted in part and denied in part and the decision of the Lake County Tax Appeal Board is modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lake County by the Assessor of that county at the value of \$133,280 for the land and \$97,088 for the improvements. The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Lake County Tax Appeal Board is modified.

Dated this 1st of September, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of September, 1999, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

David R. and Linda P. Lee
2408 Brook Hollow Dr.
Billings, MT 59105

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Jackie Ladner
Appraisal Supervisor
Lake County Courthouse
Polson, MT 59860

Lucinda Willis
Lake County Tax Appeal Board
PO Box 7
Polson, MT 59860

DONNA EUBANK
Paralegal